

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

IN RE:	§	CASE NO. 15-42665-rfn13
STEVAN J. DAVILA AKA ESTEBAN	§	
DAVILA AKA ESTEBAN J. DAVILA, JR.	§	CHAPTER 13
DEBTOR	§	
	§	A HEARING ON THIS MOTION
TAYLOR BEAN & WHITAKER MORTGAGE	§	HAS BEEN SET FOR:
CORP, ITS SUCCESSORS AND ASSIGNS	§	
MOVANT	§	<u>JANUARY 10, 2018</u>
VS.	§	<u>9:30 AM</u>
STEVAN J. DAVILA AKA ESTEBAN	§	
DAVILA AKA ESTEBAN J. DAVILA, JR.,	§	
DEBTOR AND JUDY DAVILA, CO-DEBTOR	§	
AND TIM TRUMAN, TRUSTEE	§	
RESPONDENTS	§	
	§	
	§	
	§	
	§	
	§	

**MOTION OF TAYLOR BEAN & WHITAKER MORTGAGE CORP, ITS SUCCESSORS AND
ASSIGNS FOR RELIEF FROM AUTOMATIC STAY AND CO-DEBTOR STAY
AS TO 113 DAFFODIL CT, WEATHERFORD, TX 76086**

**PURSUANT TO LOCAL BANKRUPTCY RULE 4001-1(B), A RESPONSE IS
REQUIRED TO THIS MOTION, OR THE ALLEGATIONS IN THE MOTION MAY BE
DEEMED ADMITTED, AND AN ORDER GRANTING THE RELIEF SOUGHT MAY
BE ENTERED BY DEFAULT.**

**ANY RESPONSE SHALL BE IN WRITING AND FILED WITH THE CLERK OF THE
UNITED STATES BANKRUPTCY COURT AT THE ELDON B. MAHON U.S.
COURTHOUSE, 501 W. TENTH STREET, FORT WORTH, TX 76102-3643), BEFORE
CLOSE OF BUSINESS ON JANUARY 5, 2018, WHICH IS AT LEAST 14 DAYS FROM
THE DATE OF SERVICE HEREOF.* A COPY SHALL BE SERVED UPON COUNSEL
FOR THE MOVING PARTY AND ANY TRUSTEE OR EXAMINER APPOINTED IN
THE CASE. ANY RESPONSE SHALL INCLUDE A DETAILED AND
COMPREHENSIVE STATEMENT AS TO HOW THE MOVANT CAN BE
“ADEQUATELY PROTECTED” IF THE STAY IS TO BE CONTINUED.**

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

COMES NOW **TAYLOR BEAN & WHITAKER MORTGAGE CORP, ITS SUCCESSORS AND ASSIGNS** (hereinafter Movant), secured creditor and party in interest to the above-styled proceeding and files this Motion for Relief from Automatic Stay and Co-Debtor Stay. In support of its Motion, Movant would respectfully state unto the Court as follows:

I. JURISDICTION

1. This Court has jurisdiction of this matter pursuant to 28 U.S.C. §1334 and 11 U.S.C. §§105, 362 and 1301(co-debtor stay).

2. This is a core proceeding under 28 U.S.C. §157(b)(2)(G).

II. FACTS

3. On or about July 6, 2015, STEVAN J. DAVILA AKA ESTEBAN DAVILA AKA ESTEBAN J. DAVILA, JR. (hereinafter Debtor) filed a Voluntary Petition For Relief under Chapter 13 of the Bankruptcy Code, thereby initiating the above-styled Bankruptcy Case. TIM TRUMAN is the duly appointed and acting Trustee.

4. On January 24, 2006, Stevan Davila and Judy Davila, executed a Note ("Note") in the original principal amount of \$174,954.00, payable to the order of Taylor, Bean & Whitaker Mortgage Corp., its successors and assigns. A co-debtor stay is applicable to JUDY DAVILA, who is not a debtor in this bankruptcy proceeding but is protected by the co-debtor stay of 11 U.S.C. §1301.

5. Concurrently with the execution of the Note, Stevan Davila and Judy Davila, Wife and Husband, as joint tenants, executed a Deed of Trust granting Movant a lien on certain real property ("Property") to secure payment of the Note. A co-debtor stay is applicable to JUDY DAVILA, who is not a debtor in this bankruptcy proceeding but is protected by the co-debtor stay of 11 U.S.C. §1301.

The Deed of Trust grants Movant a lien on the Property described as follows:

SURFACE ESTATE ONLY IN AND TO LOT 40, BLOCK 1, SPRING GARDEN COMMONS, PHASE THREE, AN ADDITION TO PARKER COUNTY, TEXAS, ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT CABINET B, SLIDE 709, PLAT RECORDS, PARKER COUNTY, TEXAS.

Also known as:
113 DAFFODIL CT
WEATHERFORD, TX 76086

The Deed of Trust and subsequent Assignment was duly recorded in PARKER County Deed Records.

6. Debtor alleges to be the current owner of record of the Property.
7. Debtor and Co-Debtor are in default on the obligation to Movant in that Debtor failed to make installment payments when due and owing pursuant to the terms of the above-described Note.
8. As of December 1, 2017, the status of the indebtedness is as follows:
 - a) Debtor and Co-Debtor are due for July 2017 post-petition and subsequent monthly installments. Payments are currently \$1,162.37 per month. The unpaid principal balance due and owing to Movant on the Note is \$216,139.45.
 - b) Additional fees have been incurred, including Movant's attorney fees and costs in an amount not to exceed that set by local rule, practice or order.

III. RELIEF FROM THE STAY

9. Movant requests that this Honorable Court terminate the automatic stay pursuant to the provisions of the Bankruptcy Code to allow Movant to exercise all of its rights and remedies against the Debtor and Co-Debtor under state law, including, inter alia, foreclosing its lien on the Property.

10. Movant alleges that cause exists for the lifting of the stay and Movant's interest is not adequately protected.

11. It has been necessary for Movant to hire the law firm of *Codilis & Stawiarski, P.C.* to collect the debt owed to it through this Court. Pursuant to the Note and Deed of Trust, Movant is entitled to reimbursement of its reasonable attorneys' fees for their services.

12. Movant requests that an Order granting its motion for relief from automatic stay, if such Order should be entered, will be effective immediately upon entry and, Rule 4001 (a) (3) is waived, and enforcement of such Order will not be stayed until the expiration of fourteen days after entry of the Order.

13. Movant requests that upon termination of stay, it be exempt from further compliance with FRBP 3002.1 and Local Bankruptcy Rule 3002-2.

14. Movant further requests that an Order granting its motion for relief from automatic stay, if such Order should be entered, will remain in full force and effect if this bankruptcy case is converted to a different Chapter in the United States Bankruptcy Court.

WHEREFORE, PREMISES CONSIDERED, Movant prays that this Court enter an Order granting relief from the automatic stay to allow Movant to exercise and enforce all its rights and remedies against the Debtor and Co-Debtor as a secured creditor and perfected lienholder to the Property; including, but not limited to, payment of bankruptcy attorney fees and costs, foreclosure and disposition of the Property, payment of costs, expenses, and reasonable attorneys' fees in accordance with the terms of the Note and Deed of Trust, and for such other relief to which Movant may be justly entitled, either at law or in equity.

Respectfully submitted,
Codilis & Stawiarski, P.C.

By: Harriet L. Langston
Sarah S. Cox SBOT 24043439
Annarose Harding SBOT 24071438
Harriet L. Langston SBOT 11924400
400 N. Sam Houston Parkway East, Suite 900A
Houston, Texas 77060
Telephone: (281) 925-5200
Facsimile: (281) 925-5300
ATTORNEYS FOR MOVANT

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion for Relief from Automatic Stay and Affidavit in Support of Motion for Relief from Automatic Stay was served on the following parties on **December 26, 2017** at the addresses indicated by deposit in the United States Mail, first class postage prepaid and/or by electronic notice on **December 22, 2017**.

STEVAN J. DAVILA AKA ESTEBAN DAVILA AKA ESTEBAN J. DAVILA, JR.
113 DAFFODIL COURT
WEATHERFORD, TX 76086
DEBTOR

JUDY DAVILA
113 DAFFODIL COURT
WEATHERFORD, TX 76086
CO-DEBTOR

BEHROOZ P. VIDA
3000 CENTRAL DRIVE
BEDFORD, TX 76021
ATTORNEY FOR DEBTOR

TIM TRUMAN
6851 N.E. LOOP 820, SUITE 300
N. RICHLAND HILLS, TX 76180
CHAPTER 13 TRUSTEE

ENTITY WITH INTEREST IN PROPERTY:

ROUNDPOINT MORTGAGE SERVICING
PO BOX 19409
CHARLOTTE, NC 28219

UNITED STATES TRUSTEE
1100 COMMERCE STREET
ROOM 976
DALLAS, TX 75242-1496

PARTIES REQUESTING NOTICE:

ROUNDPOINT MORTGAGE SERVICING CORPORATION
5016 PARKWAY PLAZA BLVD., SUITE 200
CHARLOTTE, NC 28217
MOVANT

LINEBARGER GOGGAN BLAIR & SAMPSON, LLP
C/O MELISSA L. PALO
2777 N. STEMMONS FREEWAY
SUITE 1000
DALLAS , TX 75207

Codilis & Stawiarski, P.C.

By: Harriet L. Langston
Annarose Harding SBOT 24071438
Sarah S. Cox SBOT 24043439
Harriet L. Langston SBOT 11924400
ATTORNEYS FOR MOVANT

44-09-3295
XXXXXX8388
DAVILA, STEVAN J.
Conventional

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RESPONDENTS	§	

CERTIFICATE OF CONFERENCE ON
MOTION FOR RELIEF FROM AUTOMATIC STAY

COMES NOW Codilis & Stawiarski, P.C., Attorney for Movant, and affirms that the office of Debtor's Counsel, BEHROOZ P. VIDA, was contacted. On December 13, 2017, Sarah Cox, counsel for Movant herein spoke with Behrooz P. Vida advising that the Debtor had fallen behind on post-petition mortgage installments to Movant and that a Motion for Relief from Stay was scheduled to be filed. Behrooz P. Vida advised that the Motion for Relief from Stay was opposed at this time.

Respectfully submitted,

Codilis & Stawiarski, P.C.

By: /s/ Harriet L. Langston
Annarose Harding SBOT 24071438
Sarah S. Cox SBOT 24043439
Harriet L. Langston SBOT 11924400
400 N. Sam Houston Parkway East, Suite 900A
Houston, Texas 77060 (281) 925-5200
Facsimile: (281) 925-5300
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